

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JANUARY 3, 1990

Honorable Norman Y. Mineta
House of Representatives
Washington, D.C. 20515

Dear Mr. Mineta:

This is in response to your letter of November 1, 1989 to Jonathan Cannon requesting details on the effect of our Resource Conservation and Recovery Act (RCRA) referral policy on Technical Assistance Grants (TAGs) at two sites in California. The National Priorities List (NPL) Update published October 4, 1989 (Federal Register (54 FR 41000)) transfers to RCRA authority a number of sites which had been proposed for the NPL some time ago. These sites include two at which response actions are underway and for which Superfund TAGs have been awarded (IBM in San Jose and Hewlett-Packard in Palo Alto).

EPA Region IX had anticipated this possibility by including in each of these TAGs a special condition stating that the grants will be terminated should the corresponding site be transferred to RCRA. After reviewing the circumstances, however, we have concluded that the grants should be continued in this unique situation. As a policy, however, we do not provide TAGs for sites likely to be deferred.

Both the Hewlett-Packard and IBM sites were "proposed for listing [on the NPL] and a response action ha[d] begun" at the time of the award; thus each site was eligible for a TAG (40 CFR section 35.4025). The two sites were not transferred to RCRA jurisdiction because of any reduction in the need for site cleanup.

On the contrary, since its deferral to RCRA, each of the sites continues to pose a threat to human health and the environment, as it did at the time of its proposal for the NPL and the commencement of a response action. The original grants were properly aware need for cleanup still exists. We believe, therefore, that Congress' intent in providing the Technical Assistance Grant program would best be served by continuing the TAGs. Conversely, terminating the grants based on administrative decision, rather than on cleanup of the sites, would convey a message entirely inconsistent with our commitment to public and community involvement in the process of cleaning up the nation's hazardous waste sites. However, if we initiate cost recovery regarding these sites, the costs of these TAGs will be included in the recovery action.

If I can be of further assistance to you, please let me know.

Sincerely,

Don R. Clay
Assistant Administrator

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